

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

THE PEOPLE,

Plaintiff and Respondent,

v.

EDWARD HUNTER,

Defendant and Appellant.

B305511

(Los Angeles County
Super. Ct. No. BA285452)

APPEAL from an order of the Superior Court of Los Angeles County, Lisa B. Lench, Judge. Affirmed.

Edward Hunter, in pro. per.; and Marta I. Stanton, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

On January 24, 2005, two men got out of a car and walked down the street past a residence as the car followed slowly behind them.¹ The two men turned around, walked backed to the residence, and fired gunshots at two men outside the residence, killing one. Hunter was prosecuted for murder and attempted murder on the theory that he was the driver of the car and aided and abetted the criminal acts of the shooters. The jury was instructed with CALCRIM Nos. 400 and 401 on direct aiding and abetting;² the jury was not instructed as to the natural and probable consequences doctrine. (*Hunter, supra*, B192541.)

In April 2006, a jury convicted Hunter of first degree murder and attempted murder. Among other enhancement findings, the jury found that in the commission of the murder a principal intentionally discharged a firearm causing death and that Hunter committed both crimes for the benefit of a criminal street gang.

¹ Our summary of the facts regarding the underlying crime and trial are based on our opinion in Hunter's direct appeal in (*People v. Hunter* (July 5, 2007, B192541) [nonpub. opn.] (*Hunter*)), of which we take judicial notice.

² CALCRIM No. 401, as given in Hunter's case, states: "To prove that [Hunter] is guilty of a crime based on aiding and abetting that crime, the People must prove that: [¶] 1. The perpetrator committed the crime; [¶] 2. [Hunter] knew that the perpetrator intended to commit the crime; [¶] 3. Before or during the commission of the crime, [Hunter] intended to aid and abet the perpetrator in committing the crime; and [¶] 4. [Hunter]'s words or conduct did in fact aid and abet the perpetrator's commission of the crime. [¶] Someone aids and abets a crime if he knows of the perpetrator's unlawful purpose and he specifically intends to, and does in fact, aid, facilitate, promote, encourage, or instigate the perpetrator's commission of that crime.'" (*Hunter, supra*, B192541, p. 5, fn. 2.)

The jury also found that Hunter committed the attempted murder with premeditation and deliberation.

The court sentenced Hunter to prison for 50 years to life (25 years to life on the murder count plus a consecutive 25 years to life term for the firearm enhancement). In deciding that the sentence on the attempted murder count would be served concurrently with the sentence on the murder count, the court explained that Hunter “was not . . . the active shooter, he did not shoot a gun, he was riding in the vehicle from which others shot at the two victims. And even under the best interpretation of the evidence, his assistance consisted of moving the car at the block, so that the shooters could return to it and provide what[]ever other assistance might have aided the crime.”

In his direct appeal, Hunter argued that there was insufficient evidence to support the finding that he shared the shooters’ intent or aided and abetted the shooters’ commission of the crimes. We rejected the argument and explained that “the evidence not only placed him at the scene with his fellow gang members but showed that he shared their intent and acted to facilitate the shootings.” (*Hunter, supra*, B192541, p. 7.)

In January 2019, Hunter filed a petition for resentencing under Penal Code section 1170.95.³ The superior court granted his request to appoint counsel for him.

The People filed an opposition to the petition arguing that Hunter is not eligible for resentencing because he was not convicted of murder under the felony-murder rule or the natural and probable consequences doctrine.

Hunter, through counsel, filed a response in which he argued that the record established that Hunter was “not the actual killer” and that the jury never found that he acted with malice.

³ Statutory references are to the Penal Code.

After a hearing, the court concluded that Hunter was not eligible for relief because section 1170.95 applies to murder convictions when “either a felony murder theory or a natural and probable consequences theory was presented to the jury[,] and neither of those were the situation in this case. In this case it was a straight aiding and abetting first degree willful, deliberate, premeditated murder and that’s what the jury found by virtue of the jury instructions.”

Hunter timely appealed.

We appointed counsel for Hunter, who filed a brief raising no issues and requesting that we follow the procedures set forth in *People v. Serrano* (2012) 211 Cal.App.4th 496. Counsel provided Hunter with a copy of the record and her brief, and told Hunter that he may file a supplemental brief. Counsel stated that she remains available to brief any issues upon our request.

Hunter filed a supplemental brief in which he argues that he is entitled to relief because he “was not the shooter” and not “the actual killer.”

The legislation that enacted section 1170.95 amended “the felony murder rule and the natural and probable consequences doctrine, as it relates to murder, to ensure that murder liability is not imposed on a person who is not the actual killer, did not act with the intent to kill, or was not a major participant in the underlying felony who acted with reckless indifference to human life.” (Stats. 2018, ch. 1015, § 1(f), p. 6674.) “As a result, the natural and probable consequences doctrine can no longer be used to support a murder conviction. [Citations.] The change did not, however, alter the law regarding the criminal liability of direct aiders and abettors of murder because such persons necessarily ‘know and share the murderous intent of the actual perpetrator.’ [Citations.] One who directly aids and abets another who commits murder is thus liable for murder under the new law just as he or

she was liable under the old law.” (*People v. Lewis* (2020) 43 Cal.App.5th 1128, 1135, review granted Mar. 18, 2020, S260598.)

Here, although Hunter was neither a shooter nor the actual killer, the record of conviction, which includes our opinion in Hunter’s direct appeal, establishes that he was convicted based on a theory of direct aiding and abetting of murder. He “is thus liable for murder under the new law just as he . . . was liable under the old law” (*People v. Lewis, supra*, 43 Cal.App.5th at p. 1135, review granted Mar. 18, 2020, S260598), and therefore ineligible for relief under section 1170.95. (See *People v. Soto* (2020) 51 Cal.App.5th 1043, 1055–1059, review granted Sept. 23, 2020, S263939 [driver of car in which a passenger shot and killed a victim was not eligible for relief under section 1170.95 because jury was instructed as to direct aiding and abetting and not instructed on natural and probable consequences doctrine].)

We are satisfied that Hunter’s counsel has fulfilled her responsibilities (see *People v. Cole* (2020) 52 Cal.App.5th 1023, 1038, review granted Oct. 14, 2020, S264278) and conclude that the appeal raises no arguable issues.

DISPOSITION

The trial court's February 25, 2020 order denying Edward Hunter's petition for resentencing under section 1170.95 is affirmed.

NOT TO BE PUBLISHED.

ROTHSCHILD, P. J.

We concur:

BENDIX, J.

FEDERMAN, J.*

* Judge of the San Luis Obispo County Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.